

Protecting What Makes Your Wine Special – Legally!

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Protecting Ideas

- Trademarks/Brands
 - Consumer perceptions as to source and quality
- Trade Secrets
 - Something you do secretly that gives economic benefit
- Patents
 - Protects inventions of processes and equipment

Trade Secrets

- Something you know/do
 - Derives economic value
 - Not generally known to others
 - Not readily ascertainable by others
- Subject of reasonable efforts to maintain secrecy

Uniform Trade Secrets Act

"**Trade secret**" means information, including a formula, pattern, compilation, program, device, method, technique, or process that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Something You Know or Do

- May be information that is known
- but Not known that you use that information
- Seeking economic benefit
 - Process includes step/materials that makes your wine different
 - Equipment does something that you find beneficial for your wine

Reasonable Efforts for Secrecy

- Limit access – who has a need to know
 - To information
 - To process
 - To location / machine used in carrying out the trade secret
- Mark documents “Confidential” or “Secret”
- Require execution of non-disclosure agreements
 - Employees
 - Third parties (particularly) why does someone outside the company need to know
- Maintain records securely
- Discuss importance of the trade secret

Winery Trade Secrets

- Handling of grapes
 - Source
 - Storage
 - Preparing for processing
- Processing of the grapes
- Fermentation process
- Bottling
- Storage
- Business information

Obtain Economic Benefit of The Trade Secret

- Use it - in making your wine
- Use it - in branding
 - Coca Cola – secret formula for cola concentrate
 - Kentucky Fried Chicken - Colonel's secret blend of spices



Promotion on WebSite (Advertising)

Kentucky Fried Chicken



PROMOTIONS CHICKEN SANDWICHES MEALS \$5 FILL UPS SIDES CLASSICS DESSERTS DRINKS SAUCES

ORIGINAL RECIPE®

THE ORIGINAL

Still freshly prepared in every restaurant, the Colonel's Original Recipe® chicken is seasoned with our secret blend of 11 herbs & spices and then hand breaded all day long by a certified cook.

ENJOY OUR WORLD-FAMOUS CHICKEN IN A VARIETY OF WAYS:

- **8pc. Bucket Meal:** 8pc. Chicken, 2 Large Sides, 4 Biscuits (Feeds 4+)
- **12pc. Bucket Meal:** 12pc. Chicken, 3 Large Sides, 6 Biscuits (Feeds 6+)

NUTRITION

ONE PIECE (DRUMSTICK)



120

CALORIES

3

CARBS (G)

7

TOTAL FAT (G)

380

SODIUM (MG)

NUTRITION CALCULATOR

Kentucky Fried Chicken

Original Recipe®

THE ORIGINAL

Still freshly prepared in every restaurant, the Colonel's Original Recipe® chicken is seasoned with our secret blend of 11 herbs & spices and then hand breaded all day long by a certified cook.

Branding

The *only* wine made by your proprietary branded process

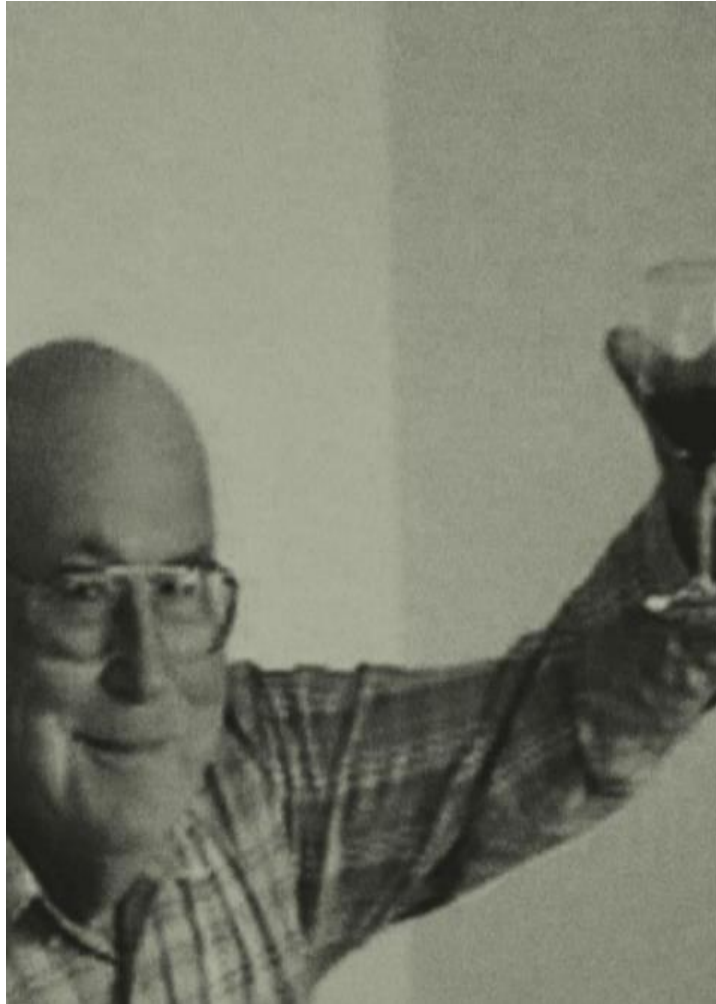
Fermented with ZOUDS process
for that distinctive aromatic flair
developed over long years of wine making

(Does not tell what the process is / equipment / how it works)

Let's See How One Winery is doing This



Yes, it's a Question of How They Do What They Do



Twenty-five years later, we're still exploring.

It all began at the dinner table. Charlie Wagner Sr., who co-founded Caymus Vineyards in 1972 with his wife, Lorna, and son, Chuck, would mix wines to find the perfect glass to pair with his meal. No one blended wines back then, so his experiment was pretty radical.

Fast forward to 1989, when Conundrum White was born, quickly taking off with its mysterious, tropical notes and amazing versatility.

Conundrum Red, serious yet approachable, was introduced in 2011. Today, it's Charlie's grandson, Charlie Wagner II, who keeps Conundrum as original as ever.

Promotion of What They Do But Not The Specifics

From lush Napa to
moody Monterey

We source Conundrum in places that are both famed and off the beaten track – in Napa, Monterey, Santa Barbara, San Benito, Solano and Tulare Counties. Its character starts in the vineyard, in small towns where families have been farming for generations and there's always plenty of good conversation, great grapes and more to explore.

[Story](#) [Wines](#) [Winemakers](#) [Explore](#) [Purchase](#) [Visit](#)

Trade Secrets in Practice

- You use the trade secret
- Not readily ascertained by others
- Economic benefit
- Efforts to maintain secret

Patents for Inventions

- Invention
 - Useful
 - New
 - Non-obvious different enough from that previously known
 - Timely file for patent coverage
- Process
 - Steps for doing or making something
- Machine
 - Equipment - an article of manufacture

Patent Right is Exclusion

- Grant of patent gives right to exclude others from
 - Using
 - Making
 - Selling
 - Offering to sell
- Claimed invention

Claimed Invention

- Subject matter believed to be the invention
- Claim is a “parts list”
- What is necessary to make an operating version of the invention

Patenting Involves Exchange of Information

- Inventor tells the public in a document
 - How to make
 - How to use
 - Subject matter claimed as the invention

In exchange,

Patent grants right to exclude for limited period of time

Patenting Process

- File application
- Examination of claims
 - Novel
 - Non-obvious

Report of examination

Not patentable

Patentable

Response

Distinguish claims / argument

Issue patent

Public or Not, Depending...

Invention may or may not become public

Publication

If application allowed over prior art –
then public when patent issues

Not allowed (and not published) –
then remains confidential

Example - A Way to Treat Grapes Before Juicing

Maintain grapes in special atmosphere for three hours, 20 minutes at specific temperature (atmosphere at temperature prior to insertion)

- Trade secret
 - Limited access
- Patent
 - Process comprising steps of:
 - bringing treatment zone to a predetermined temperature
 - disposing fruit articles within treatment zone
 - maintaining fruit articles within treatment zone for predetermine period.

A Sensory Aroma Glass

(12) **United States Patent**
Stern et al.

(10) **Patent No.:** US 9,271,589 B2
(45) **Date of Patent:** *Mar. 1, 2016

(54) **SENSORY AROMA GLASS**

(75) **Inventors:** Lewis Stern, Modesto, CA (US); Meara Kelley, Modesto, CA (US); Tim Ryan, Modesto, CA (US)

(73) **Assignee:** E. & J. Gallo Winery, Modesto, CA (US)

(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.
This patent is subject to a terminal disclaimer.

(21) **Appl. No.:** 13/610,793

(22) **Filed:** Sep. 11, 2012

(65) **Prior Publication Data**

US 2013/0062359 A1 Mar. 14, 2013

Related U.S. Application Data

(63) Continuation of application No. 12/618,455, filed on Nov. 13, 2009, now Pat. No. 8,281,954.

(51) **Int. Cl.**
B65D 25/00 (2006.01)
A47G 19/22 (2006.01)

(52) **U.S. Cl.**
CPC A47G 19/2205 (2013.01); A47G 2400/045 (2013.01)

(58) **Field of Classification Search**

CPC A47G 7/07; B65D 85/505; B65D 25/00
USPC 220/703, 711, 712, 719, 745
See application file for complete search history.

(56) **References Cited**

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| 2008/0179276 A1 * | 7/2008 | Lohman et al. | 215/346 |

* cited by examiner

Primary Examiner — Steven A. Reynolds

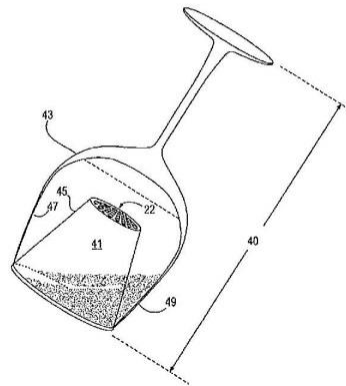
Assistant Examiner — King M Chu

(7A) *Attorney, Agent, or Firm* — Steptoe & Johnson LLP

(57) **ABSTRACT**

A sensory aroma glass is disclosed. According to one embodiment, an apparatus comprises a fluid barrier; and a fluid container designed for containing a fluid. The fluid barrier is in contact with the rim or internal or external sidewall of the fluid container. The fluid barrier extends into the fluid container. The fluid barrier has an opening that allows aroma of the fluid to escape from the fluid container without allowing the fluid to escape from the fluid container.

14 Claims, 6 Drawing Sheets



A Bottle

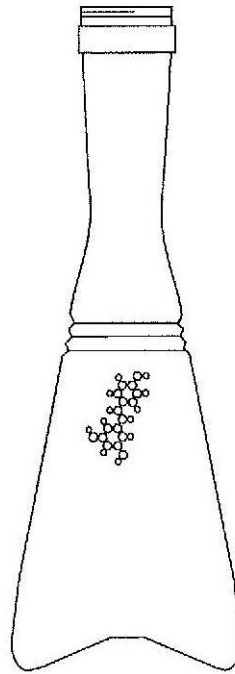
(12) **United States Design Patent**
Coppola et al.

(10) Patent No.:

US D617,651 S

(45) Date of Patent:

** **Jun. 15, 2010**



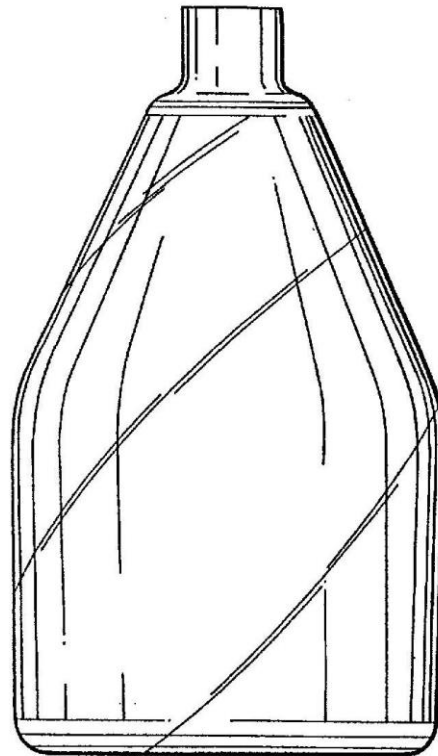
Another Bottle

United States Patent [19]

[11] **Patent Number:** **Des. 421,392**

Visola

[45] **Date of Patent:** **** Mar. 7, 2000**



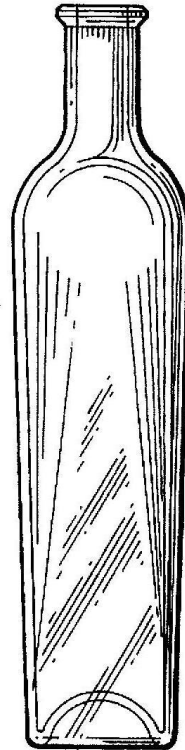
Another Bottle

United States Patent [19]

[11] **Patent Number:** **Des. 387,668**

Bond

[45] **Date of Patent:** ****Dec. 16, 1997**



A Reclosable Closure System



(12) **United States Patent**
Flesher

(10) **Patent No.:** US 6,772,892 B2
(45) **Date of Patent:** Aug. 10, 2004

(54) **REUSABLE CLOSURE SYSTEM FOR BOTTLE-TYPE CONTAINERS**

(75) **Inventor:** Hal Stephen Flesher, Turlock, CA (US)

(73) **Assignee:** E. & J. Gallo Winery, Modesto, CA (US)

(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) **Appl. No.:** 10/299,926

(22) **Filed:** Nov. 19, 2002

(65) **Prior Publication Data**

US 2004/0094500 A1 May 20, 2004

(51) **Int. Cl.⁷** B65D 39/00

(52) **U.S. Cl.** 215/249; 215/274; 215/352

(58) **Field of Search** 215/228, 249, 215/247, 263, 264, 250, 251, 286, 213, 273, 294-300, 255, 256, 257, 288, 352, 54, 274; 220/801, 803, 804

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6,024,235 A * 2/2000 Schwab 215/247
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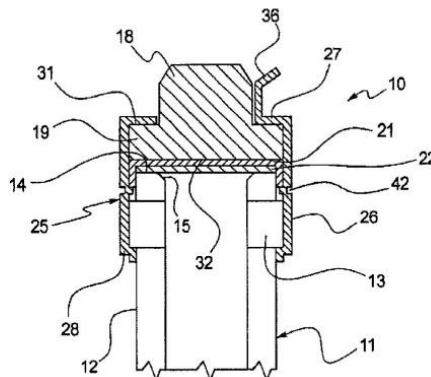
Primary Examiner—Lien Ngo

(74) *Attorney, Agent, or Firm*—Marshall, Gerstein & Borun LLP

ABSTRACT

(57) A reusable closure system for containers, such as wine bottles. The closure system is designed for containers or bottles having a finish ring disposed on an outer surface of the neck of the container. The system includes a disk connected to a plug. The disk includes a first flat surface and a second opposing surface. The plug extends outward from the second surface. In the initial sealed and packaged condition, the flat surface of the disk overlies the rim of the container and a removable compression ring securely holds the disk in place over the rim of the container. The removable compression ring includes a cylindrical body with an upper end connected to a radially inwardly extending upper lip which engages the second surface of the cap and through which the plug extends. The compression ring also includes a radially inwardly extending lower lip which engages the finish ring of the container. The compression ring preferably includes a pull tab and perforations for easy removal. The flat surface of the disk may be equipped with a gasket and oxygen barrier layer.

29 Claims, 2 Drawing Sheets



Process for Producing Marmelo Wines

United States Patent [19]
Miyata

[11] **Patent Number:** **4,983,407**
[45] **Date of Patent:** **Jan. 8, 1991**

- [54] **PROCESS FOR PRODUCING MARMELO WINES**
- [75] **Inventor:** **Takashi Miyata**, Setagaya, Japan
- [73] **Assignee:** **Hakodate Winery Ltd.**, Hokkaido, Japan
- [21] **Appl. No.:** **479,852**
- [22] **Filed:** **Feb. 14, 1990**
- [51] **Int. Cl.⁵** **C12G 1/00**
- [52] **U.S. Cl.** **426/15; 426/592;**
426/62
- [58] **Field of Search** **426/11, 15, 592, 62**

[56] **References Cited**

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Dictionary of Fermentation, 1988-Published by Asakura Soten.

Primary Examiner—Marianne Cintins
Attorney, Agent, or Firm—Klauber & Jackson

[57] **ABSTRACT**

A process for producing marmelo wines is disclosed. The process comprises the steps of crushing marmelo fruits, thereafter pressing the fruits to remove marmelo juices, adding gelatin in an amount of 0.1 to 0.5 percent by volume to the marmelo juice to precipitate and remove a polyphenol compound contained in the marmelo juice, and adding wine yeast in an amount of 200 to 250 ppm by volume to the marmelo juice or material in which water is added to the juice for low temperature fermentation.

2 Claims, No Drawings

Process for Extracting Oleanolic Acid from Plant Material

(12) **United States Patent**
Jerz

(10) **Patent No.:** **US 6,700,014 B2**

(45) **Date of Patent:** **Mar. 2, 2004**

(54) **PROCESS FOR EXTRACTING OLEANOLIC ACID FROM PLANT MATERIAL.**

(75) Inventor: **Gerold Jerz**, Gruenwald (DE)

(73) Assignee: **E. & J. Gallo Winery**, Modesto, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 22 days.

(21) Appl. No.: **10/024,978**

(22) Filed: **Dec. 19, 2001**

(65) **Prior Publication Data**

US 2003/0114708 A1 Jun. 19, 2003

(51) **Int. Cl.**⁷ **C07C 61/12**

(52) **U.S. Cl.** **562/498**

(58) **Field of Search** 562/498

(56) **References Cited**

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6,037,492 A 3/2000 Lopez de Hierro

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Chao-Mei Ma et al., "Chemical Modification of Oleanene Type Triterpenes and Their Inhibitory Activity Against HIV-1 Protease Dimerization," Chem. Pharm. Bull. 48(11) 1681-1688 (2000).

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F. Radler, "The Surface Waves of the Sultana Vine (*Vitis vinifera* cv. Thompson Seedless)," Aust. J. Biol. Sci., 1965, 18, 1045-1056.

* cited by examiner

Primary Examiner—Paul J. Killos

(74) *Attorney, Agent, or Firm*—Marshall, Gerstein & Borun LLP

(57) **ABSTRACT**

A process for extracting oleanolic acid from plant material is disclosed. Dried plant material is provided and an extraction process is carried out with a non-halogenated polar to medium polar solvent. The resulting solution that contains oleanolic acid is separated from the plant material and the solvent is removed using cooling, vacuum-evaporation or other techniques. A precipitate is formed that contains mostly oleanolic acid. Subsequent purification steps to provide highly purified oleanolic acid include washing techniques, re-crystallization techniques or the use of chromatography.

47 Claims, No Drawings

Trade Secrets Advantages/Disadvantages

- Secret information
- Not readily ascertainable (or reverse engineered)
- Created/maintained internally
- Efforts to maintain secrecy
- Continuous
- Someone may develop the trade secret independently
(Coca Cola and Pepsi)
(both have secret formulas for cola beverages)

Patenting Advantages/Disadvantages

- Public
- Discloses how to make and use
- Cost of obtaining patent rights
- Patent grant determined by government
- Limited period for right to exclude

OK...Now What?

- Think about your processes
 - Taking reasonable steps to limit access
 - Documenting secrecy
 - Winery specific
 - Not readily ascertainable
- New or recent developments
 - For which you want to exclude use by others
 - Generally applicable in other industries
 - Readily reverse engineered

KFC Recipe

- Chicken
- 25 pounds flour
- cup of salt
- cup of pepper
- and

Reach up on the shelf for ...

one bag of the Colonel's secret blend of 11 herbs & spices

What is a Trademark?

- The purpose of trademark law is to prevent confusion in the marketplace
- Therefore, any device that makes it possible to distinguish the goods (or services) of one provider from those of another

***In re Trade-Mark Cases*, 100 U.S. 82, 92 (1879)**

The right to adopt and use a symbol or a device to distinguish the goods or property made or sold by the person whose mark it is, to the exclusion of use by all other persons, has been long recognized by the common law and the Chancery Courts of England and of this country and by the statutes of some of the states. It is a property right for the violation of which damages may be recovered in an action at law and the continued violation of it will be enjoined by a court of equity, with compensation for past infringement. This exclusive right was not created by the act of Congress and does not now depend upon it for its enforcement. The whole system of trade-mark property and the civil remedies for its protection existed long anterior to that act, and has remained in full force since its passage.

Int. Cl.: 33

Prior U.S. Cl.: 47

United States Patent and Trademark Office

Renewal

Reg. No. 257,256

Registered June 4, 1929

OG Date May 16, 1989

**TRADEMARK
PRINCIPAL REGISTER**

CRESTA BLANCA

GUILD WINERIES AND DISTILLERIES
(CALIFORNIA CORPORATION), AKA
CRESTA BLANCA VINEYARDS,
P.O. BOX 55

WOODBIDGE, CA 95258, ASSIGNEE
BY MESNE ASSIGNMENT AND
CHANGE OF NAME FROM CRESTA
BLANCA WINE CO. (CALIFORNIA
CORPORATION) OAKLAND, CA

FOR: WINES, IN CLASS 47 (INT. CL.
33).

FIRST USE 0-0-1893; IN COMMERCE
0-0-1893.

SER. NO. 279,146, FILED 2-11-1929.





Int. Cl.: 33

Prior U.S. Cl.: 47

Reg. No. 1,236,639

Registered May 3, 1983

United States Patent and Trademark Office

TRADEMARK
Principal Register

WE WILL SELL NO WINE BEFORE ITS TIME

Paul Masson, Inc. (California corporation), d.b.a. Paul
Masson Vineyards
13150 Saratoga Ave.
Saratoga, Calif. 95070

For: WINE, in CLASS 33 (U.S. Cl. 47).
First use Jul. 31, 1976; in commerce Jul. 31, 1976.
Owner of U.S. Reg. Nos. 692,920, 897,052 and
others.

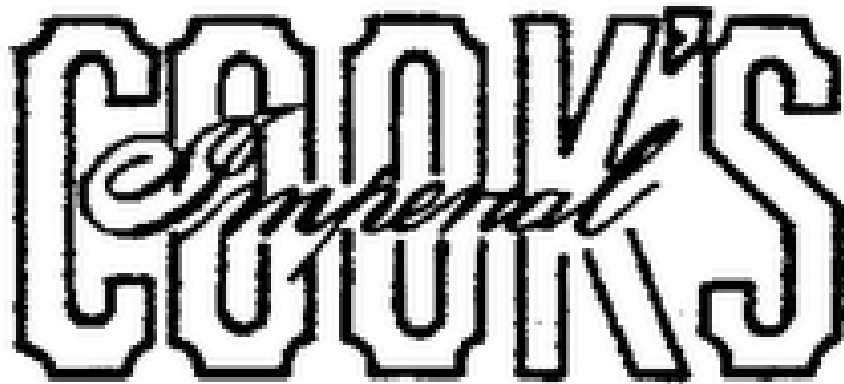
Ser. No. 344,209, filed Jan. 4, 1982.

BARBARA SUNDBERG, Examining Attorney

BY GOLLY! BUY GALLO
JOLLY OLD GALLO



FATHER OF WINE
GALLO
IT'S THERMALIZED

The logo features the word "COOK'S" in a large, bold, outlined, blocky font. The word "Imperial" is written in a cursive script across the middle of "COOK'S".

Amesbury, Mass.

St. Louis, Mo.



Int. Cl.: 33

Prior U.S. Cl.: 47

United States Patent and Trademark Office

Reg. No. 1,349,883

Registered July 16, 1985

**TRADEMARK
PRINCIPAL REGISTER**

ROBERT MONDAVI

ROBERT MONDAVI WINERY (CALIFORNIA
CORPORATION)
7801 ST. HELENA HIGHWAY
OAKVILLE, CA 94562

FOR: WINE, IN CLASS 33 (U.S. CL. 47).
FIRST USE 6-0-1979; IN COMMERCE
6-0-1979.

ROBERT MONDAVI IS THE NAME OF A
LIVING INDIVIDUAL WHOSE CONSENT IS
OF RECORD.

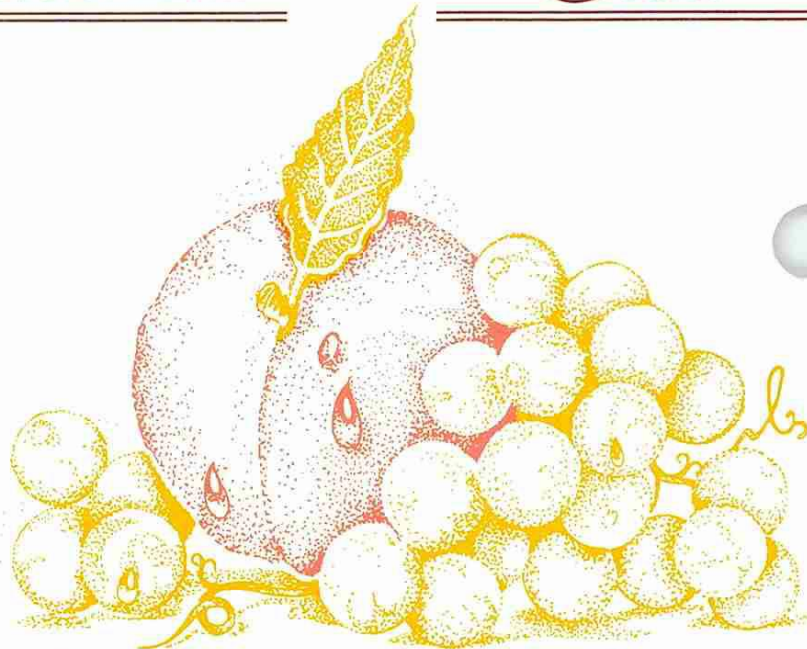
SER. NO. 465,034, FILED 2-10-1984.

JULIE B. SEYLER, EXAMINING ATTORNEY

Château



Élan



Summer Wine

GEORGIA MUSCADINE WINE
BLENDED WITH NATURAL PEACH FLAVOR

Produced and bottled by Chateau Elan Ltd., Braselton, Georgia
Bonded Winery No. GA-30 Alcohol 6% by volume

Int. Cl.: 33

Prior U.S. Cl.: 47

United States Patent and Trademark Office **Reg. No. 1,641,801**
Registered Apr. 16, 1991

**TRADEMARK
SUPPLEMENTAL REGISTER**

SUMMER WINE

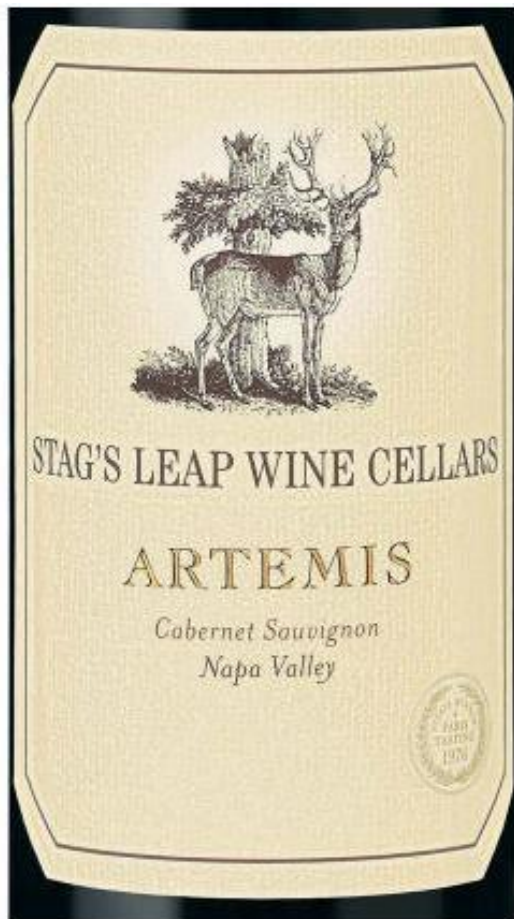
CHATEAU ELAN, LTD. (DELAWARE CORPORATION)
P.O. BOX DRAWER A
BRASELTON, GA 30517

FOR: WINES, IN CLASS 33 (U.S. CL. 47).
FIRST USE 6-10-1987; IN COMMERCE
6-10-1987.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "WINE", APART FROM THE
MARK AS SHOWN.

SER. NO. 73-789,809, FILED 3-28-1989.

FRANCINE L. APPLEWHITE, EXAMINING
ATTORNEY



Benefits of Federal Registration

- **Presumption of validity**
- **Incontestable** after five years
- **Nationwide priority** vs. actual geographic market only
- **Intent to use** vs. actual use only
- **Deterrent**

What is Infringement?

- Use of...
 - Same or confusingly similar mark
 - On or in connection with same or related goods
 - Creating a likelihood of confusion

How do you know what is too similar?

- Looks the same
- Sounds the same
- Translation – means the same thing
- Creates the same overall commercial impression

Too similar to allow?



In 1911, Carmel Wine Co. and California Winery got into a dispute because:

- One wanted to use on its label a representation of a vineyard, a herd of camels, and two men, apparently garbed in the costumes of Bible times, bearing a grape
- And the other wanted to use on its label a pictorial representation of two men with dress similar to that in the other's mark, these men bearing a bunch of grapes between them

***Carmel Wine Co. v. California Winery*, 38 App. D. C. 1, 2-3 (1911)**

“We think it is apparent, without argument, that the two marks are deceptively similar within the meaning of the statute.

It goes without saying that one has no right to incorporate the mark of another as an essential feature of his mark.

Such a practice would lead to no end of confusion, and deprive the owner of a mark of the just protection which the law accords him.”

Or more recently...

One party featured on its wine labels

- A downward-pointing, stylized grape leaf design using various shades of green, yellow, orange, red and brown, always coupled with a banner that intersected the leaf and that stated the producer's brand name

The bottle featured

- A visible cork with printed leaves on it, a brown or burgundy neck label with gold lines on the top and bottom that form an oval in the back, and an off-white label featuring the multicolored leaf design

...while the other party's bottle featured

- A visible cork with printed leaves on it, a brown or burgundy neck label with gold lines on the top and bottom that form an oval in the back, and an off-white label
- With a prominent, downward-pointing, stylized grape leaf design in various shades of green, yellow, orange, red and brown

Kendall-Jackson Winery, Ltd. v. E. & J. Gallo Winery, **150 F.3d 1042 (9th Cir. 1998)**

Result?

- “Grape-leaf designs have become generic emblems for wine.”
- “A producer's *depiction* of a grape leaf may, however, be so distinctive as to warrant protection from copying. . . .
- If a particular rendering of a grape leaf has the power to distinguish one brand from another, it is the rendering that should be evaluated for its distinctiveness. A photo-realistic rendering would be merely descriptive, whereas a stylized rendering could be inherently distinctive.”

Got it?

How similar do the *goods* have to be?

- Wine, cheese and salami are “complementary products” often sold and advertised through the same channels, so the third Gallo brother (Joseph Jr.) was not permitted to use E&J’s “GALLO” mark to sell cheese.
- Wine and energy drinks are “relatively similar as they are both products sold in the beverage industry,” so “El Gallo” energy drink enjoined.
- Apple juice and apple-based non-alcoholic beverages are *not* sufficiently related for Franciscan (owner of “Pinnacles” and “Pinnacles raches”) to be able to prevent registration of “Domaine Pinnacle” mark.

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- Wine and vodka are sufficiently similar that White Oak Vineyards was able to enjoin the use of “WHITE OAK PREMIUM VODKA”
 - Wine and beer are sufficiently related that Annheuser-Busch could stop “Winebud”

Questions?

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